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No. 92-1856

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

CITY OF LADUE, EDITH J. SPINK, MAYOR OF THE CITY OF LADUE, THOMAS R. REMINGTON, GEORGE L. HENSLEY, GALE F. JOHNSTON, JR., ROBERT A. WOOD, ROBERT D. MUDD, JOYCE T. MERRILL, AS MEMBERS OF THE CITY COUNCIL OF THE CITY OF LADUE,
Petitioners,

v.

MARGARET P. GILLEO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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REPLY BRIEF FOR THE PETITIONERS

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REPLY BRIEF FOR THE PETITIONERS

Respondent's submission ignores the unique and extraordinary Record about the City of Ladue, a carefully planned 8.5 square mile residential community that was designed by Harland Bartholomew, a nationally renowned land-use expert. Since its founding in 1936, Ladue has made a longstanding and comprehensive effort to preserve its landscape and natural beauty. Refusing to acknowledge that Ladue's sign ordinance is content-neutral, respondent compounds the error by also failing to recognize the undisputed evidence of the unique environmental problems caused by the proliferation of signs that conflict with Ladue's special aesthetic ambience.

I. LADUE'S SIGN ORDINANCE TARGETS ONLY THOSE SIGNS THAT PROLIFERATE, CAUSE VISUAL BLIGHT, DIMINISH THE NATURAL BEAUTY OF THE LANDSCAPE, AND DETRACT FROM THE CITY'S UNIQUE AESTHETIC AMBIENCE.

Respondent and her *amici* erroneously assert that Ladue totally bans an entire medium of expression—the display of visual messages through signs.[1] This assertion is erroneous because Ladue does not ban all signs containing political or other messages. Ladue has limited the scope of its ordinance to the environmental and aesthetic problems caused by the placement of signs on the landscape or on structures attached to the land. J.A. 120 (definition of "sign" in New Chapter 35, § 35-1). Thus, Ladue's sign ordinance is a reasonable regulation of the "location" and "manner" of expression through signs displayed in a particular way that harms the landscape and natural beauty of the City.

Respondent's identical window sign could have been mailed to others as a "flyer"; distributed to neighbors or

[1] Res. Br. 12, 41; U.S. Br. 8, 15; American Advertising Federation et al. (hereinafter "AAF") Br. 17 n.16; Washington Legal Foundation et al. (hereinafter "WLF") Br. 21; People for the American Way et al. (hereinafter "PAW") Br. 2, 17-19; Association of National Advertisers, Inc. (hereinafter "ANA") Br. 3, 21-23.

passers-by as a "handbill"; posted on her car as a car sign or "bumper sticker"; and attached to a placard that she could have held while standing or sitting on her lawn or that she could have worn as a sandwich sign while she marched or "picketed" through the streets of Ladue. In addition, respondent easily could have displayed a flag [2] containing a peace symbol as well as the identical words that were written on her yard and window signs. She also could have had her message placed on a button, cloth patch, arm band, sash, or tee-shirt that could have been worn as an article of clothing. Each of these modes of expression involves the display of visual messages and is permitted under Ladue's sign ordinance. J.A. 120.[3] It is thus incorrect to suggest that the City bans all signs.[4]

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[2] Consistent with its effort to prohibit only those types of signs that proliferate and create visual blight, the City did not include flags in its definition of signs. As the Court observed in *Burson v. Freeman*, —— U.S. ——, 112 S. Ct. 1846, 1856 (1992), "States adopt laws to address the problems that confront them. The First Amendment does not require States to regulate for problems that do not exist." Respondent's objection that Ladue's ordinance is too comprehensive is internally inconsistent with her assertion that the sign ordinance is unconstitutional because it does not prohibit flags. Res. Br. 23-24.

[3] "Sign" is defined, in part, as a "name, word, letter, writing, identification, description, or illustration." J.A. 120 (New Chapter 35, § 35-1). Contrary to the assertions of respondent and her *amici*, Res. Br. 26, n.21; ANA Br. 9, a plain ribbon of any color is not prohibited under Ladue's sign ordinance. *Id. See* n.2, *supra*.

An additional limitation on Ladue's sign ordinance is that it only applies to signs that are "in view of the general public" from the street or a neighboring property. J.A. 120. Thus, the ordinance does not restrict an individual's right to display all types of signs and messages inside of one's home.

[4] The Court should not permit respondent to avoid the legal effect of her failure in the summary judgment proceedings to contest Ladue's evidence that signs and other ample, alternative modes of speech are available for people to express themselves. Based on traditional summary judgment principles, the Court should decide this issue as a matter of law in Ladue's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-255 (1986).

Indeed, compared to respondent's yard and window signs, many of these alternative signs are as inexpensive and much more effective in conveying respondent's message to large numbers of people. Willow Hill Lane, the street on which respondent lives, is a non-thoroughfare with fifty-seven private, single-family homes. J.A. 182. Respondent's signs had a small audience consisting of her neighbors, visitors, and the limited commercial traffic on the street. An inexpensive picketing sign, sandwich sign, bumper sticker, and car sign, for example, would have reached a much larger audience.[5]

Ignoring the undisputed Record below and the law of summary judgment,[6] respondent and her *amici* refuse to

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[5] The Record is consistent with the District Court's findings in *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984). There, the Court concluded that "nothing in the findings indicates that the posting of political posters on public property is a uniquely valuable or important mode of communication * * *." *Id.*

Respondent unsuccessfully attempts to distinguish *Vincent* on the grounds that lampposts and utility poles on which the signs were placed were not a "public forum." Res. Br. 45-46. But the Court observed that "[j]ust as it is not dispositive to label the posting of signs on public property as a discrete medium of expression, it is also of limited utility in the context of this case to focus on whether the tangible property itself should be deemed a public forum." 466 U.S. at 815 n.32. The Court also evaluated Los Angeles' sign ordinance under the time, place, or manner test reserved for speech in a public forum. *Id.* at 804-805. *See* Pet. Br. at 16.

[6] Rejecting Malcolm C. Drummond's factual observations and expert opinion, respondent and her *amici* do not accept the uncontested facts in the Record establishing that sign proliferation is a genuine problem that Ladue eliminated with its sign ordinance. Res. Br. 29, 30 n.23; U.S. Br. 15, 21; WLF Br. 9, 14 n.11; ANA Br. 4, 17-20.

Respondent and her *amici* ignore the law of summary judgment by assuming facts that are not supported by the Record. *See e.g., id.* Because summary judgment was entered against the City, the Court must not only accept the truth of the undisputed Record but also resolve any factual disputes in favor of the City. *Anderson*, 477 U.S. at 255.

Respondent's submission is further undermined by her failure to apply the controlling standard of review of whether the City

accept the undisputed facts and expert opinion of Malcolm C. Drummond, an urban planner with more than forty years of experience including thirty years in the St. Louis area. Drummond witnessed the proliferation of signs in residential communities, near Ladue, which he has served as a planner. J.A. 139, 154-55.

Respondent improperly dismisses as "conjecture," Br. at 30 n.23, Drummond's uncontroverted testimony that Ladue's sign ordinance helped the City to achieve its goal of "aesthetic excellence" and was a reasonable solution to the problem of sign proliferation. J.A. 157-58. Contrary to respondent's suggestion, Drummond's opinion and Ladue's sign regulation is consistent with the Court's holding in *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984). There, the Court held that a City "may decide that the esthetic interest in avoiding 'visual clutter' justifies a removal of signs creating or increasing that clutter * * *. [I]f permitted to remain, ["Taxpayers for Vincent" signs] would encourage others to post additional signs * * *." 466 U.S. at 817.[7]

made a reasonable judgment in enacting the ordinance to address the problems caused by the proliferation of signs. *See Anderson*, 477 U.S. at 251-255 (factual dispute is immaterial if it is not outcome-determinative under prevailing law). *See also City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) ("[t]he First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce new evidence of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses."); *Ward v. Rock Against Racism*, 491 U.S. 781, 801 (1989) (courts must defer to a city's "reasonable determination" of the best way of addressing land-use problems).

[7] Res. Br. 30 n.23. Respondent erroneously argues that in reviewing a grant of summary judgment in her favor, this Court should reject Drummond's and Mayor Spink's first-hand observations of sign proliferation and accept, as a matter of law, the testimony of Nancy R. Sachs. *Id.* Sachs is a local resident with no expertise or experience in land-use, zoning, or municipal government, as respondent has conceded. Br. at 9 n.12; J.A. 190-193

The Court should reject the mistaken argument of respondent and her *amici* that Ladue may only prevent the visual blight caused by billboards or large permanent signs. Res. Br. 15, 47; U.S. Br. 12; WLF Br. 16. In *Vincent*, the Court equated the problems created by billboards and a proliferation of small temporary signs. 466 U.S. at 806-807, 817. The Court held that the "visual assault" caused by the "accumulation of signs" is a nuisance and a "significant substantive evil within the City's power to prohibit." *Id.* at 807.[8] A commentator's assessment of the aesthetic and social costs of signs underscores the validity of the Court's holding in *Vincent*. "In many cities, sign clutter dominates the streetscape, overshadowing buildings and trees, eroding cultural and architectural

(Sachs Aff.). During an eighteen-day period in which this litigation was pending before the District Court and in which there was no election or unusual commercial activity in the City, Sachs made an "informal survey" of selected streets in Ladue. *Id.* Based on this survey, she concluded that there was no basis for Ladue's concern about sign proliferation. *Id.*

Sachs' affidavit represented respondent's entire evidentiary case filed in the summary judgment proceedings on Ladue's new sign ordinance. Based on Ladue's evidentiary record, the controlling standard of review, and the law of summary judgment, this Court should disregard Sachs' affidavit because it is immaterial on any issue in this case. *See* Pet. Br. 20-21. Even if Sachs' affidavit were sufficient to create a triable issue of fact, because summary judgment was entered against the City, the judgment below must be reversed.

[8] The Court's recognition of the seriousness of the environmental problem is reflected by its acknowledgement of the views of seven Justices in *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981), who "explicitly concluded" that the "city's interest in avoiding visual clutter * * * was sufficient to justify a prohibition of billboards." *Vincent*, 466 U.S. at 806-807. *See also* Richard Brooks and Peter Lavigne, *Aesthetic Theory and Landscape Protection: The Many Meanings of Beauty and Their Implications for the Design, Control and Protection of Vermont's Landscape*, 4 *Journal of Environmental Law and Policy* 129, 131, 137, 144-145 (1985); William H. Whyte, *The Last Landscape* 300 (1968) ("The first thing is to get rid of billboards. * * * They are a desecration to the landscape and that is reason to be done with them.").

diversity, ruining scenic views and historic ambience and blighting whole neighborhoods." Edward T. McMahon, *Regulating Signs*, Main Street News, No. 70 at 1, 2 (National Trust For Historic Preservation, Aug. 1991). If one considers the problems caused by the proliferation of signs—visual blight, safety hazards, and the deterioration of real estate values—one must conclude that there is no basis for distinguishing between the 15 by 44-inch cardboard political signs at issue in *Vincent*, 466 U.S. at 792, and the 24 by 36-inch yard sign and 8½ by 11-inch window sign that belonged to respondent. Pet. App. 22a, 3a.

Respondent ignores the Court's and the commentators' recognition of the unique evils that signs create. Signs placed in the ground or on an attached structure create unique regulatory problems and cannot be compared to activities involving flyers, handbills, leaflets, door-to-door solicitation, or even the sound trucks that were banned under a constitutional ordinance analyzed in *Kovacs v. Coopers*, 366 U.S. 77 (1949). Because of the great number of signs, people are captive to them and cannot escape the invasion on their privacy.[9] One cannot look at signs and then, like flyers, handbills, and leaflets, discard them out of the view of those who want to enjoy an uncluttered

[9] Respondent mischaracterizes the privacy rationale supporting Ladue's sign ordinance when she mistakenly contends that it is based on the controversial messages contained on some signs. Res. Br. 38. Ladue's sign ordinance applies equally to controversial and noncontroversial signs. J.A. 116-131. Malcolm Drummond, Ladue's land-use planner, accurately summarized the privacy concerns when he testified, "signs and billboards naturally cause visual blight as well as impinge on privacy because those who see them are a 'captive audience.'" J.A. 155.

Respondent also misconstrues the safety rationale underlying Ladue's sign ordinance. Res. Br. 37. The ordinance recognizes that the "proliferation of an unlimited number of signs * * * *may* cause safety and traffic hazards to motorists, pedestrians, and children * * *." J.A. 117 (emphasis added); *see also id.* at 119. The ordinance permits any sign that identifies a safety hazard because of the City's substantial interest in the public's safety and welfare. J.A. 118-119, 122. If Ladue did not allow such signs, the City's interest in protecting public safety would be harmed.

landscape.[10] While sound trucks may cause a temporary distraction, they do not remain posted; signs present a continuing harm to the beauty of the landscape.

II. LADUE'S SIGN ORDINANCE MUST BE EVALUATED AS PART OF THE CITY'S COMPREHENSIVE LAND-USE AND ZONING REGULATIONS OF PRIVATE AND PUBLIC PROPERTY.

Respondent and her *amici* ask this Court to adopt a jurisprudential theory that clashes with the fundamental assumptions of zoning, land-use, and municipal planning. They erroneously suggest that in evaluating Ladue's ordinance, the Court should only consider the aesthetic impact of a single yard or window sign.[11] Respondent's suggestion

[10] In his opinion for the Court in *Vincent*, Justice Stevens' analysis of the unique problems created by signs demonstrates the reasonableness of Ladue's solution. "[T]he substantive evil—visual blight—is not merely a possible by-product of the activity, but is created by the medium of expression itself." 466 U.S. at 810. "By banning these signs, the City did no more than eliminate the exact source of the evil it sought to remedy." 466 U.S. at 808.

Justice Stevens distinguished the Court's decisions in *Schneider v. State*, 308 U.S. 147, 162, 164 (1939), and *Martin v. City of Struthers*, 319 U.S. 141, 147-148 (1943), which held invalid ordinances that regulated the distribution of handbills and door-to-door solicitation. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 552 n.23 (Stevens, J., dissenting in part). "In those cases, the state interests the ordinances purported to serve—for instance, the prevention of littering or fraud—were only indirectly furthered by the regulation of communicative activity." *Id. See also Vincent*, 466 U.S. at 808-810 (distinguishing *Schneider*).

[11] Res. Br. 36 n.30; U.S. Br. 15; WLF Br. 22. Respondent and her *amici* particularly question Ladue's decision not to permit window signs. *Id.* Land-use experts include wall signs, which can sometimes be in the form of graffiti, and window signs as examples of the use of signs creating aesthetic problems that should be regulated. Daniel R. Mandelker and William R. Ewald, *Street Graphics and the Law* i-vi, 74, 97 (revised ed. 1988) (hereinafter "*Street Graphics*"). Moreover, respondent herself relies on a book that offers potential candidates and campaign workers a step-by-step procedure on the best way of distributing mass quantities of signs, which will especially be used as window signs and will

conflicts with the Court's recognition in *Vincent* of the "visual assault" caused by the "accumulation of signs." 466 U.S. at 807. Moreover, as one scholar observed, "the nuisance cases disclose early judicial recognition of the fact that some uses are incompatible with others and that the rights of all landowners will be diminished unless the rights of all are subject to reasonable restraints. This, of course, is the major premise of comprehensive zoning * * *." Robert M. Anderson, 1 *American Law of Zoning 3d* § 3.03 at 89-90 (1986).[12] *See also Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387-89 (1926) (upholding the reasonable judgment of the legislature to enact zoning and land-use laws that are necessary to protect the public welfare in a particular community).

In *Ward v. Rock Against Racism*, 491 U.S. 781, 801 (1989), the Court rejected the argument being made by respondent and her *amici* here. The Court stated that "[t]he validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case." *Id.* The Court's holding in *Ward* has particular importance when one considers the problem of sign proliferation in the context of Ladue's comprehensive land-use plan. J.A. 140, 141, 147, 149, 151, 157-58 (city planner's analysis of the land-use and zoning assumptions of Ladue's sign ordinance and comprehensive city plan). Ladue's sign ordinance is an integral part of its zoning laws that are designed to pre-

proliferate throughout the geographic area in which an election is being held. Res. Br. 18 (quoting Dick Simpson, *Winning Elections: A Handbook in Participatory Politics* 77-79 (1981)).

[12] Respondent implicitly rejects the premise of land use and zoning laws when she argues that Ladue should be legally compelled to assume that all property owners in Ladue will police themselves and not permit signs to proliferate in the City. Res. Br. 29-30. But as two experienced experts have observed, "An individual cannot be his own traffic cop. Within a community, it is not possible for everyone to make and enforce his own rules. When every street graphic erected is a law unto itself, community bad manners result." *Street Graphics*, *supra*, at 34.

serve the community's natural beauty and protect the land values throughout the City. J.A. at 116-119 (text of Ladue's sign ordinance stating that the preservation of the value of real estate in Ladue is a principal purpose of the ordinance). As the Court recognized in *Vincent*, these goals are entirely permissible ones: "[The] interests are both psychological and economic. The character of the environment affects the quality of life and the value of property in both residential and commercial areas." 466 U.S. at 817.

Respondent and her *amici* assume the role of Ladue's land-use planners and suggest that the City could eliminate the problem of visual blight caused by a multiplicity of signs by regulating the size, location, time of placement, and number of signs in a subdivision or on a family's property.[13] In *Ward*, however, the Court rejected the suggestion that cities must enact the "least restrictive * * * alternative" to satisfy the time, place, or manner test. 491 U.S. at 799-800. The Court held that "[t]he validity of [time, place, or manner] regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests or the degree to which those interests should be promoted." 491 U.S. at 800 (internal quotation marks omitted). *See also Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 299 (1984) (rejecting proposed "less speech-restrictive alternatives" to preserve park lands and stating that "[w]e do not believe * * * the time, place, or manner decisions assign to the judiciary the authority to replace the Park Service as the manager of the Nation's parks or endow the judiciary with the competence to judge how much protection of park lands is wise and how that level of conservation is to be attained.").

Even if respondent were permitted to disregard *Ward*'s rejection of the least restrictive alternative test, none of

[13] Res. Br. 39-40; U.S. Br. 22; AAF Br. 14; PAW Br. 3; WLF Br. 22; ANA Br. 4, 13.

her proposed alternatives would eliminate the problem of visual blight in a constitutional fashion. An ordinance limiting the size and location of signs does not address the problems created by the proliferation of signs. If Ladue limited the number of signs to one per household, it would still be compelled to permit more than 3,000 signs that would clutter the city's landscape.[14] *See Vincent*, 466 U.S. at 816 (rejecting the argument that similar proposed alternatives are "constitutionally mandated" and observing that if an alternative were enacted "the volume of permissible postings * * * might so limit the ordinance's effect as to defeat its aim of combating visual blight."); *cf. City of Cincinnati v. Discovery Network, Inc.*, —— U.S. ——, 113 S. Ct. 1505, 1510 (1993) (municipal ordinance limiting number of newsracks was underinclusive and unconstitutional because it had only a "minute" or "paltry" effect on the problem of visual blight). Moreover, as the Fourth Circuit has held, an ordinance that limits the number of signs on an individual lot or within a subdivision could have serious constitutional problems because it would discriminate in favor of the issues selected by the individual member of each household or subdivision who is permitted to erect the allotted signs.[15]

The importance of deferring to Ladue's legislative plan for eliminating the problem of sign proliferation and visual blight is highlighted because experts are valuable in addressing land-use and zoning issues. *See Street Graphics, supra.* Since its inception, Ladue has consistently relied on

[14] The 1990 United States census data show that Ladue has 3,384 housing units and a population of 8,847. 1990 Census Data for St. Louis County, *Supplement to St. Louis County, Missouri Fact Book* 10, 13 (1991). These units are houses because Ladue's zoning ordinance does not allow multiple-unit dwellings such as apartments. *See* J.A. 145, 147; Ladue's Zoning Ordinance, No. 1175 § II A (9).

[15] In *Arlington County Republican Committee v. Arlington County, Virginia*, 983 F.2d 587, 594 (4th Cir. 1993), the court held that a county's limit of two signs per homeowner infringes speech because it prevents each person living in the home to post signs for multiple candidates in multiple political races.

expert advice to address such issues. J.A. 139-141, 157-158. Ladue's sign ordinance is consistent with its original comprehensive city plan prepared by Harland Bartholomew, one of the fathers of urban planning in this country. J.A. 144, 151, 157-158.[16]

Ladue's longstanding and comprehensive commitment to preserving its community's aesthetics should "inform the application of the relevant test" for the regulation of the time, place, or manner of speech. *Frisby v. Schultz*, 487 U.S. 474, 481 (1988).[17] *See* Pet. Br. 3-8; J.A. 145-158. *See also Ward*, 491 U.S. at 791 (the justification and purpose for the governmental regulation is an essential element of the time, place, or manner test);

[16] *See* Eldridge Lovelace, *Harland Bartholomew[:] His Contribution to American Urban Planning* 58 (1992) ("Application of an orderly and logical system or science to the preparation of the comprehensive plan was Harland Bartholomew's first and greatest contribution to city planning."). Bartholomew's work reflected his philosophy that a community can improve its appearance and aesthetics with careful planning. *See id.* at 14. *See also id.* at 154-161 (describing Bartholomew's "scientific approach" in land-use planning as Chairman of the National Capital Planning Commission in 1953 and his instrumental role in the building of the Washington Metro).

[17] As Professor Andre Angsthelm of Grenoble University observed in his study of Parisian sign regulation, "Aesthetics refuse generalization, they are always a case in point." *Quoted in Street Graphics, supra*, at 8. Malcolm Drummond testified that each of the many communities he has represented "has its own particular physical features, geography, history, socio-economic mix and comprehensive view of its own planning and land use goals * * *." J.A. 140. Drummond explained that there are "great differences" in each city's "appearance, aesthetic quality and harmony of its environment, and the degree of the regulation it is willing to impose and accept in order to achieve and maintain its land use goals and its aesthetic, environmental quality and other community planning objectives * * *." J.A. 140-141. The fact that other cities may not share Ladue's aesthetic values and thus do not to enact ordinances to eliminate the problems created by the proliferation of signs in their communities should not prevent Ladue from concluding otherwise. J.A. 140-141, 154-155. *See Ward*, 491 U.S. at 801.

Burson v. Freeman, — U.S. ——, 112 S. Ct. 1846, 1858-1859 (1992) (Kennedy, J., concurring) (same). Ladue has proven its commitment to aesthetics and land-use planning through the City's consistent and successful defense of its land-use and zoning ordinances in the Missouri courts over the past forty years. J.A. 145-146 (collecting cases).

This Court has consistently affirmed the authority of cities to regulate private property to advance aesthetic goals.[18] *Euclid*, 272 U.S. at 387-389 (city's right to abate nuisances for aesthetic reasons constitutes authority for the constitutional validity of zoning laws); *Berman v. Parker*, 348 U.S. 26, 33 (1954) (stating that the concept of the public welfare "is broad and inclusive" and "[t]he values it represents are spiritual[19] as well as

[18] The strength of Ladue's interests in aesthetics is demonstrated by its ability to satisfy Justice Brennan's test that requires cities to establish in the Record that their sign ordinance was part of a "serious[]" and "comprehensive[]" plan of "addressing aesthetic concerns." *Metromedia*, 453 U.S. at 531 (Brennan, J., concurring, joined by Blackmun, J.). Justices Brennan and Blackmun observed that "[o]f course, it is not for a court to impose its own notion of beauty on San Diego." *Id.* The United States acknowledges Ladue's "substantial" interests and recognizes that "particular communities, because of their unique and special heritage, may have a special interest in regulating for aesthetic purposes." U.S. Br. 9-10 (internal quotation marks omitted).

Respondent argues that Ladue should not be compared to historic Williamsburg, a city that Justice Brennan suggested might satisfy his rigorous test (453 U.S. at 534), because Ladue is not an "outdoor museum." Res. Br. 37 n.31. But Ladue has a stronger claim for the regulation of sign clutter than does Williamsburg. Families who live in the private, residential neighborhoods of Ladue would be affected every day by the evils of visual blight, while the historic district of Williamsburg is reserved for tourism. *See Frisby*, 487 U.S. at 194 (recognizing the unique value of privacy in a small, residential neighborhood).

[19] Contrary to Respondent's suggestion, Br. at 17, the Old Testament does not support the notion that signs should be allowed to defile Nature and the beauty of the landscape. The Bible posits that God created Nature long before human beings began to erect signs and billboards. *See, e.g., Psalms* 19:2 (King James) ("The

physical, aesthetic as well as monetary," *quoted in Vincent*, 466 U.S. at 805). The *Berman* Court held that it was "within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." 348 U.S. at 33. *See also Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (city has a legitimate interest in preserving places where "the blessings of quiet seclusion and clean air make the areas a sanctuary for people"); *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 129 (1978) ("New York City's objective of preserving structures and areas with special historic, architectural, or cultural significance is an entirely permissible governmental goal.").[20]

Respondent's argument that she should have the absolute right "to do what she wishes"[21] with her real property conflicts with the Court's holding in *Barnes v. Glen*

heavens declare the glory of God; and the firmament showeth his handiwork.").

Respondent and her *amici* misstate normative Jewish law concerning the placement of a *Mezuzah* and compound the error by asserting that a *Mezuzah* would be prohibited under Ladue's sign ordinance. Res. Br. 17 n.15; WLF Br. 17. A *Mezuzah* is affixed on the *inside* of the right doorpost one-third of the distance from the top of the doorpost. *Daat Yisrael VeMinhagav* [*Laws and Customs of Israel*] 12-13 (*Pardes* 1952) (Hebrew with English tr.) (compiled from the Codes, *Chayye Adam* and *Kizzur Shulchan Arukh*). One is able to view the *Mezuzah* as one passes through a doorway. A *Mezuzah* is not prohibited under Ladue's ordinance because it is not placed on the "exterior" of the outside wall and is not visible from the street in view of the general public. *See* J.A. 120-121 (definition of sign).

[20] Ladue's commitment to aesthetics extends to the preservation of its residential architecture as well as its landscape and natural settings. *State ex rel. Stoyanoff v. Berkeley*, 458 S.W.2d 305, 310 (Mo. 1970) (upholding enforcement of Ladue's ordinance regulating architecture of residential homes "when the basic purpose to be served is that of the general welfare of persons in the entire community" and the ordinance maintains the "stability of value * * * of surrounding property") (emphasis deleted).

[21] Res. Br. 16. *See also* AAF Br. 15; WLF Br. 7, 9; PAW Br. 20; ANA Br. 26-27.

Theatre, Inc., —— U.S. ——, 111 S. Ct. 2456, 2460 (1991), as well as the settled legal doctrine, discussed above, upholding the validity of zoning laws and the government's right to abate nuisances.

Respondent and her *amici*[22] erroneously argue that *Vincent* should be interpreted as prohibiting a city from regulating sign proliferation on private as opposed to public property. The Court in *Vincent*, however, rejected this argument noting that "the esthetic interests that are implicated by temporary signs are presumptively at work in all parts of the city * * * and affect[] the quality of life and value of property in both residential and commercial areas." 466 U.S. at 817. To be sure, *Vincent* noted that a "private citizen's interest in controlling the use of his own property justifies the disparate treatment [between private and public property]." *Id.* at 811. But the statement merely reflects the Court's deference to each city's land-use and zoning laws. *Id.* The context of this statement was the Court's rejection of the argument that Los Angeles' sign ordinance was unconstitutional because it chose not to extend its ban on temporary signs to private property. *Id.* at 811.[23] The Court, however,

[22] Res. Br. 16, 45-46; AAF Br. 15; WLF Br. 9; PAW Br. 20, 23.

[23] In *Vincent*, the American Civil Liberties Union [hereinafter "ACLU"], which represents respondent here, argued that Los Angeles' sign ordinance was unconstitutional because it did not extend its regulation of signs to private property. "[T]he City's willingness to permit posting of private property demonstrates the City has determined that traffic safety and aesthetics are not transcendent objectives." Brief for the ACLU at 29, *Vincent* (No. 82-975) (internal quotation marks omitted). Ladue, however, has prohibited all signs posted on private property except those required by public safety and the Constitution. Surely this demonstrates that the City's objectives are "transcendent."

In *Vincent*, the ACLU also argued that Los Angeles' failure to regulate signs on private property "discriminates against the views of those who do not control private property. * * * It is the poor who are unlikely to have the means for private property on which they may post signs." *Id.* at 38-39. The ACLU in this case argues the reverse: that Ladue is discriminating against the poor

did not hold that a city is *required*, as a matter of federal constitutional law, to treat private property in residential neighborhoods differently than public property.

III. LADUE DOES NOT DISCRIMINATE AGAINST THE CONTENT OF SPEECH BY ALLOWING ON-SITE SIGNS AND BY RECOGNIZING THE SIGNIFICANT LAND-USE DIFFERENCES BETWEEN PRIVATE SINGLE-FAMILY RESIDENCES AND STORES, OFFICES, RELIGIOUS INSTITUTIONS, AND SCHOOLS THAT SERVE THE PUBLIC.

Respondent and her *amici* improperly characterize Ladue's limited on-site exceptions to its ordinance as content-based.[24] They ignore the neutral governmental interests and the land-use rationale for each of the exceptions. The signs that are permitted may be constitutionally required because of the unique relationship between the location and function of the signs. Pet. Br. 27-30.[25] There are no "ample alternative channels for communication" for the messages of these signs, which are naturally

by regulating signs on private property. Res. Br. 45. *See also* U.S. Br. 12-13; PAW Br. 23, 26. Ladue's efforts to prevent property owners from cluttering the landscape cannot be viewed as discriminating against the poor.

[24] Res. Br. 21-25; U.S. Br. 25-26; AAF Br. 3-4, 10; WLF Br. 6, 13; PAW Br. 14; ANA Br. 25-27. All of these *amici*, however, do not address the serious concerns raised by Chief Justice (then-Justice) Rehnquist, Justice Stevens, and then-Chief Justice Burger in their dissenting opinions in *Metromedia*. 453 U.S. at 555-569 (Burger, C.J., dissenting); *id.* at 540-555 (Stevens, J., dissenting in part); *id.* at 570-571 (Rehnquist, J., dissenting). These Justices criticized the plurality's "all or nothing" approach that, as a practical matter, prevents cities like Ladue from enacting ordinances to eliminate the problem of visual blight that plagues their communities. *Id. See* Pet. Br. 31-33; 24-30.

[25] *See City of Cincinnati v. Discovery Network, Inc.*, —— U.S. ——, 113 S. Ct. 1505, 1514 n.20 (1993) (discussing rationale of onsite/offsite distinction). *See also* Brief of *Amici* Hawaii et al. at 31-32 & n.13 (citing lower courts cases that have "upheld onsite/offsite sign distinctions as content-neutral restrictions based on an appropriate regulation of the 'place' or location of speech").

limited in number. *See, e.g., Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 93 (1977).

Ladue's ordinance thus merely reflects the significant land-use differences and considerations that underlie the separate regulation of property used for single-family homes and property used for offices, stores, religious institutions, schools, and other buildings frequented by the public. *See* Brief of *Amici* National Institute of Municipal Law Officers et al. at 15-23; Brief of *Amici* Hawaii et al. at 31-44. On-site identification signs are a necessity throughout the City.[26] As a matter of public necessity and convenience, however, on-site signs for the limited number of Ladue's offices, stores, religious institutions, schools, and other buildings that serve the public—local residents, visitors, and passers-by—are also needed to inform the public about the activities conducted on the premises.[27] *See Street Graphics, supra*, at 1 ("The primary function of on-premise street graphics is to *index* the environment—that is, to tell people where

[26] Respondent misinterprets the exceptions in Ladue's sign ordinance that permit residence and driveway "identification" signs. J.A. 121-122, New Chapter 35, § 35-4. Respondent erroneously argues that these signs permit advertising of one's occupation. Res. Br. 21 & n.16, 25. Ladue construes these "identification" signs to include only a street address and the name of the occupants of the home. Thus, a resident could identify her home and driveway by erecting signs that stated "Number 44—Ladue Road" and "The Smith's Residence." Ladue's zoning ordinance incorporates Ladue's sign ordinance and, therefore, follows the same governing rules on the regulation of signs. Ordinance No. 1175, § IV (B); *see* J.A. 145. Under Ladue's zoning ordinance, the definition of "home occupation" precludes any sign or exterior indication of such an accessory use. Ordinance No. 1175 at § XII.

[27] The United States, Br. at 27-28, improperly attempts to find evidence of discrimination by ignoring Ladue's limiting construction of the exception in its ordinance for "[c]ommercial signs in commercially zoned or industrially zoned districts * * *." J.A. 122. Ladue interprets this exception to apply only to signs in commercial or industrial zoned areas that "identify the premises or are directly related to activities conducted on the premises." Pet. Br. 27-28.

they can find what.") (emphasis in original).[28] *See also* U.S. Br. 26-27 n.27 (explaining neutral justification for permitting on-site signs); AAF Br. 18 ("Commercial activity is basically impossible if a seller is unable to advertise on-site, at a minimum, its presence and what is offered on the premises.").

As the Court of Appeals held, Ladue's ordinance does not discriminate based on the viewpoint reflected by the message on any sign. Pet. App. 4a n.5. Ladue's ordinance, on its face, does not favor the content of any message. Commercial, noncommercial, political, nonpolitical, controversial or noncontroversial signs are all prohibited under Ladue's ordinance. The ordinance's limited exceptions are only for those signs that are naturally limited in number and for which there are no ample alternative modes of communication. By permitting signs for which there are no adequate alternatives, the City has merely attempted to satisfy this Court's holding in *Linmark*, 431 U.S. at 93. Surely if the governmental purpose is the controlling consideration in assessing content neutrality, Ladue's attempt to comply with this Court's precedents cannot render its ordinance content-based. Likewise, because Ladue's ordinance ensures that no one has any advantage over the political and social debate in the City, it is content-neutral. *See Heffron v.*

[28] Respondent and her *amici* misunderstand fundamental land-use principles when they argue that Ladue's ordinance is content-based because it does not allow signs in residential neighborhoods that identify the activity occurring on the premises. Res. Br. 21-22; U.S. Br. 26; AAF Br. 6; PAW Br. 14; ANA Br. 24. These signs are not allowed because they proliferate and there are many alternative ways for occupants of homes to communicate with the limited audience that has an interest in the activities being conducted at the home. For example, if one is hosting a party or a political fundraiser at one's home, the most convenient and effective way of communicating the event is through telephone calls or invitations sent through the mail to intended guests, not through signs on the property.

International Society for Krishna Consciousness, 452 U.S. 640, 654-655 (1981).[29]

Respondent and her *amicus* ANA misrepresent the Record when they argue that Ladue has enforced its ordinance in a discriminatory fashion. Res. Br. 26 n.21; ANA Br. 5, 8 & n.4, 11-12. Ladue's sign ordinance does not give City officials any discretion to permit signs based on the viewpoint or content of an individual sign. J.A. 116-131. Moreover, there is not a scintilla of evidence in the Record that Ladue has enforced its sign ordinance in a discriminatory fashion.[30] Neither the District Court

[29] Respondent has abandoned, without explanation, the District Court's holding that Ladue discriminated against noncommercial speech by allowing "signs like traffic signs, street signs or house numbers." Br. at 25. *Cf.* Pet. App. 28a (District Court's opinion holding identical exceptions are unconstitutional); Pet. App. 4a, 8a (Court of Appeals' opinion).

[30] Respondent's assertion of discrimination is based on testimony concerning Ladue's predecessor sign ordinance that has been repealed and is not at issue before this Court. J.A. 26-37, Old Chapter 35 (repealed January 21, 1991). *See* Res. Br. 4-5 & nn.2-4; 26 & n.21; 32-33 & n.25. As petitioners previously explained, Pet. Br. 21-23, respondent's discussion of the Record on Old Chapter 35 is factually and legally irrelevant.

Assuming, *arguendo*, that Ladue's predecessor sign ordinances had any legal relevance, respondent misrepresents the Record and ignores the standard for reviewing a grant of summary judgment. Ladue's Chief of Police, Calvin Dierberg, testified unequivocally that in his thrity-five years of service he has "never known" the Ladue Police to discriminate in any way in the enforcement of Ladue's sign ordinance. J.A. 104-106. Chief Dierberg's testimony was supported by a computer print-out of sign ordinance violations between 1988-1990. *Id.* at 106. There is not a single instance in the Record indicating that the Police had notice of a violation and failed to enforce the sign ordinance. Respondent's claim of discrimination based on the existence of a few yard cards and other signs is the equivalent of arguing that if someone drives in excess of the speed limit and is not immediately stopped by the Police (who have no notice of the violation), then the Police could be accused of discriminatory enforcement of the City's speeding ordinance.

Respondent also improperly characterizes and takes out of context the irrelevant testimony of Mayor Spink and Councilman Remington on the meaning of ambiguous provisions of Old Chapter 35. *See* Pet. Br. 21-22. *See also* J.A. 82-83, 85, 86 (Remington); J.A. 90, 91, 93, 95 (Spink).

nor the Court of Appeals made any finding that Ladue has ever applied its current or predecessor sign ordinances in a discriminatory fashion.

The Court should not allow respondent's and her *amici*'s consistent refusal to accept the undisputed facts in the Record to obscure the practical effect of their legal position. If the judgment of the lower courts is affirmed, small, carefully planned, and beautifully landscaped residential communities like Ladue will be left powerless to protect their residents from the evils caused by the proliferation of signs.[31] The Court should not countenance

[31] Respondent implies and the United States concedes that the Highway Beautification Act of 1965 [hereinafter "HBA"], Pub. L. No. 89-285, § 101, 79 Stat. 1028 (codified as 23 U.S.C. § 131), is a reasonable regulation of the time, place, or manner of speech. Res. Br. 47, U.S. Br. 23. They, however, take the inconsistent position of attacking Ladue's sign ordinance, which has a much stronger claim of constitutional validity. Res. Br. 46-48; U.S. Br. 23-28. *See* Pet. Br. 48-50.

Respondent and the United States misstate and fail to disclose to the Court important provisions of the HBA and its accompanying regulations. Res. Br. 46-48; U.S. Br. 23-28. *See also* Res. Br. in Opp'n. to Pet. for Cert. at 13 (erroneously asserting that the HBA "is limited to industrial and commercial property"). The HBA applies to "signs, displays, and devices," which include billboards as well as small, temporary outdoor yard, window, and wall signs on public and private property. 23 U.S.C. § 131 (a)-(c); 23 C.F.R. § 750.102 (m) ("*[s]ign*" is defined to "mean[] any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System").

The United States has previously represented to this Court that the HBA "does not exempt temporary signs or those proclaiming a political message." Brief for the United States at 26 n.26, *Metromedia* (No. 80-195). The United States has now abandoned its earlier position by suggesting that the HBA's exemption for on-site signs, 23 U.S.C. § 131 (c)(3), includes political and other noncommercial "advertising" signs. U.S. Br. 26. The messages contained on respondent's yard and window signs,

this unfair result that is at odds with its jurisprudence permitting reasonable regulations of the time, place, or manner of speech.

CONCLUSION

For the foregoing reasons, as well as those stated in our opening brief, the judgment of the Court of Appeals should be reversed.

Respectfully submitted.

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however, would not be permitted under the government's new definition of an on-site sign under the HBA. *Id.*

The United States does not disclose that the regulations promulgated by the Federal Highway Administration of the Department of Transportation define the "directional and official signs" exempted under the HBA, 23 U.S.C. § 131 (c)(1), to include "service club and religious notices" and "public service signs" but not political signs. 23 C.F.R. § 750.153 (m).

Ladue has justified each of the limited exceptions contained in its sign ordinance. The United States, however, does not explain the content neutral reasons for all of the exceptions permitted by the HBA and its accompanying regulations. U.S. Br. 8 n.9 & 25-27. Nor does the government suggest how its aesthetic interest in the "7.8% of all roads and streets in the United States," which are subject to the HBA and which "cover 50.6% of all the vehicle miles traveled" in this country, can compare to the beautifully landscaped and carefully preserved 8.5 square miles constituting the City of Ladue. U.S. Br. 24 n.25. The United States also is unable to explain why property owners in Ladue should have the absolute right to erect signs that would be seen by only a handful of people, while the owners of thousands of miles of property bordering the highways that are subject to the HBA do not have the same right to erect signs that would be visible to millions of motorists. *Id.*